

WHAT IS THE EMPLOYMENT-RELATED MASS CLAIMS PROTOCOL?

- Arbitration is a private process where a neutral third-party acts like a judge and resolves a case for two or more parties. Sometimes contracts require employees or others to use arbitration in legal disputes. Where many individuals (sometimes tens of thousands) have brought arbitration cases against a single entity, it is often difficult for the arbitration provider to process these cases as quickly and efficiently as one side or both sides would like.
- CPR (the International Institute for Conflict Prevention and Resolution) is also an arbitration provider. CPR has developed a process called the Employment Related Mass Claims Protocol to help with the administration of these mass claims. The full Protocol should be read carefully and in consultation with a lawyer because this process affects each individual's (or Claimant's) legal rights.
- The Protocol uses "test" cases (a randomly selected initial round of arbitrations) to provide examples for a mediator (a neutral third party who helps the parties to a case find a solution). While the test cases go forward, the others will stand by. This should in most circumstances take about six months.
- Once the test cases result in decisions, CPR will remove information from the decisions that would reveal who Claimant is, and give copies of the decisions to the mediator. Using these examples, the mediator will try for 90 days to assist the parties through their lawyers in coming to a process for resolving all of the remaining cases.
- If a global resolution is reached by the parties to the mediation, but the individual Claimant does not like it, Claimant can proceed to an individual arbitration of the case by a neutral arbitrator.
- If a global resolution is not reached, the company or the individual parties can choose to either proceed in court or in arbitration. If the company chooses to go to court, everyone can refile their case in court. If the company chooses to proceed in arbitration, each Claimant will still have the opportunity to decide to go to court instead of arbitration.
- Any questions regarding this Protocol should be referred to cprneutrals@cpradr.org.

***The Employment Related Mass Claims Protocol is attached hereto.**

EMPLOYMENT-RELATED MASS-CLAIMS PROTOCOL (Version 1.1)

Any time greater than 30 individual employment-related arbitration cases¹ of a nearly identical nature are, or have been, filed with CPR against the same Respondent(s), where Respondent(s) and Claimants have agreed to arbitrate such cases in accordance with any of the Rules promulgated by CPR governing arbitrations, and where each Claimant has been afforded the due process protections specified on [CPR's website](#),² then the parties agree that this Protocol shall apply to any such arbitration cases for which an arbitrator has not yet been appointed³ (collectively, the "Initial Mass Arbitrations").⁴ All parties also agree that cases are of a "Nearly Identical" nature if they arise out of a factual scenario and raise legal issues so similar one to another that application of the Protocol to the number of cases at issue will reasonably result in an efficient and fair adjudication of the cases. To the extent the parties agree on the application of the Protocol to particular cases, they shall so advise CPR, and CPR shall confirm application of the Protocol. To the extent the parties disagree on the application of the Protocol to particular cases, the disagreeing party shall advise CPR, and CPR shall appoint a standing arbitrator ("Administrative Arbitrator") to determine the Protocol's applicability.⁵ In an effort to expedite resolution of any such dispute by the

¹ Any time multiple arbitrations are filed with CPR against the same Respondent(s), Claimants filing the arbitrations, in addition to serving the Notice of Arbitration(s) required in CPR's Rules, must complete the Excel spreadsheet for each of the arbitrations per the [template](#) provided by CPR on its website. Failure to do so will result in rejection of the filings by CPR.

² As specified on CPR's website, to the extent these protections are not afforded to each Claimant, CPR will decline to administer the proceeding, and this Protocol shall not apply.

³ If an arbitrator has already been appointed for a case, even if the case is considered of a Nearly Identical nature, the case shall not count toward the greater than 30 cases necessary to trigger this Protocol and shall continue as an individual arbitration until conclusion.

⁴ The application of this Protocol to arbitration cases means that the procedures set forth in this Protocol to the extent inconsistent with the procedures set forth in other Rules promulgated by CPR governing arbitrations shall apply to the arbitrations under this Protocol unless otherwise specified. And, for the avoidance of doubt, this means that the submission of the template together with the Notice(s) of Arbitration by Claimants for cases governed by the Protocol shall be deemed the complete filing(s). The Commencement Date is the date on which both the fully completed template and the Notice of Arbitration(s) have been received for the cases filed.

⁵ To the extent that the parties agree to treat a case separately from this Protocol, CPR will separate the case from this Protocol. In that event, the case shall be treated in accordance with the Rules specified by the parties and any other provisions agreed to by the parties. The same shall be true for any case that is determined by the Administrative Arbitrator to not be subject to this Protocol.

Administrative Arbitrator, the parties agree the Arbitrator may set forth such procedures as are necessary to resolve any disputes promptly. The arbitrator fees for work by the Administrative Arbitrator shall be paid by Respondent(s).⁶

Selection of the Test Cases

1. Once CPR has advised the parties that the Protocol applies to the Initial Mass Arbitrations,⁷ Respondent(s) shall submit an Initiation Fee to CPR within ten days of invoicing.
2. Once the template from Claimants and the Initiation Fee⁸ from Respondent(s) have been submitted to CPR, CPR will randomly assign sequential numbers to each of the Initial Mass Arbitrations.⁹ Those cases assigned numbers 1 through 10 will be the initial Test Cases to proceed to arbitration.
3. To the extent either counsel for Respondent(s) or Claimants in the Initial Mass Arbitrations believe that there are cases in addition to the Test Cases that are necessary to guide the Mediation Process set forth below, counsel collectively for Claimants and counsel for Respondent(s) in the Initial Mass Arbitrations may submit, within five days of the identification of the Test Cases, up to an additional five cases, along with the reasons why the addition of such cases would be necessary to the Mediation Process. Such submission shall be provided to counsel for the counterparty, CPR, and to the Administrative Arbitrator for determination. The parties agree that the Administrative Arbitrator shall determine whether these additional cases should proceed to

⁶ To the extent Claimants commence arbitrations subsequent to the Initial Mass Arbitrations that are of a Nearly Identical nature (“Newly Commenced Mass Arbitrations”) and that the parties agree should be treated pursuant to this Protocol, the cases shall proceed in accordance with the Protocol as outlined in the Protocol. If the parties disagree on the application of the Protocol to particular cases amongst the Newly Commenced Mass Arbitrations, the disagreement shall be resolved by the Administrative Arbitrator, as set forth above.

⁷ At its discretion and once there are greater than 30 Initial Mass Arbitrations, CPR may initiate the application of the Protocol even while the application of the Protocol to other arbitrations is still being resolved.

⁸ The CPR Fees referred to throughout the Protocol are defined on [CPR's website](http://www.cpradr.org).

⁹ Sequential numbers shall also be randomly assigned to any Newly Commenced Mass Arbitration cases commenced prior to the selection of the initial Test Cases. Newly Commenced Mass Arbitrations commenced after the selection of the Test Cases will be assigned sequential numbers based on the order in which they are commenced.

- arbitration based alone on the submissions by counsel or may, in its discretion, seek a response from counsel for the counterparty.¹⁰
4. Each of the initial ten Test Cases, along with any additional cases added by the Administrative Arbitrator pursuant to the process outlined above (collectively, the “Test Cases”) shall proceed to be arbitrated in accordance with the CPR’s Administered Employment Arbitration Rules (hereinafter “CPR’s Employment Rules”). However, selection of the single arbitrator for each of these Test Cases shall be made only by each of Claimants pursuant to the following process. CPR shall first present a list of qualified arbitrators from CPR’s Employment Mass Claims Panel¹¹ (hereinafter “Master List”) to Respondent(s) within five days of receipt of the Initiation Fee. Respondent(s) shall have seven days after presentation to object to any candidate on that list only on the ground that there exists justifiable doubt as to the arbitrator’s independence or impartiality in serving in these cases. Such grounds include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. The objection shall state with specificity the reasons for the objection. The objections shall be shared with counsel for Claimants in the Test Cases, who shall have seven days from when the objections are shared to provide any responses. CPR shall decide objections by referring them to a pro bono [Challenge Review Committee](#).
 5. Selection of the sole arbitrator in each of the Test Cases shall be conducted pursuant to Rule 6 of CPR’s Employment Rules with the following modifications:
 - a. Each Claimant will be presented with CPR’s Master List subject to any objections from Respondent(s) as raised in Paragraph 4 above and sustained by CPR;
 - b. Each Claimant will nominate up to three arbitrators from CPR’s Master List within seven days of its presentation to each Claimant;
 - c. If a Claimant fails to nominate three candidates within the time period, CPR will choose three candidates;
 - d. CPR will query the nominated candidates for disclosures, rates, and availability;
 - e. The disclosures, rates, and availability shall be shared with the parties, and any objections based on the disclosures must be raised with CPR within five days of the parties’ receipt of the disclosures; and

¹⁰ The Administrative Arbitrator will notify CPR of the necessary advance on costs to do this work or any other work under the Protocol, and CPR shall advance an invoice to Respondent for such amount, which invoice shall be paid within ten days of receipt.

¹¹ The Employment Mass Claims Panel is the compilation of those arbitrators from the CPR Panel of Distinguished Neutrals who have either employment experience as an advocate or neutral or training in arbitrating employment claims and who have expressed a willingness to join this Panel.

- f. Subject to payment by Respondent(s) within ten days of issuance of an invoice of an Appointment Fee per appointment to CPR, CPR will then appoint any candidate who has received no objections or for whom CPR has not sustained an objection,¹² and who is available to commence the arbitration within a reasonable timeframe after appointment.
6. Any additional fees for services in connection with these Test Cases shall be as per the [CPR Fee Schedule](#).
7. As provided in CPR's Employment Rules, and unless these cases resolve in advance,¹³ arbitrators will render final, reasoned awards (an award accompanied by the legal and factual reasoning supporting the award) (hereinafter "Final, Written Reasoned Award") within 120 days of the initial pre-hearing conference, and any extensions of time that would result in a Final, Written Reasoned Award being rendered more than 120 days after the initial pre-hearing conference must be approved by CPR.¹⁴
8. The Final, Written Reasoned Awards shall be reasonably anonymized by CPR.

The Mediation Process

9. Once the last of the Final, Written Reasoned Awards from the Test Cases has been rendered by the arbitrator, Respondent(s) shall pay the Mediation Administrative Fee to CPR within ten days of issuance of an invoice. The parties to the Initial Mass Arbitrations, as well as any parties to Newly Commenced Mass Arbitrations that were commenced prior to the initiation of the process to select the mediator (collectively, "Mediation Parties"), shall then be given an opportunity to promptly agree upon a mediator, who shall be identified from the CPR Panel of Distinguished Neutrals.¹⁵ If the Mediation Parties are unable to

¹² CPR may refer objections where necessary to its [Challenge Review Committee](#).

¹³ Should any of the Test Cases resolve in advance of an award being issued for whatever reason, Respondent(s) or Claimants of any Initial Mass Arbitrations or Newly Commenced Mass Arbitrations that have not yet resolved, or CPR, may request that the Administrative Arbitrator determine whether additional cases should be substituted amongst the Test Cases proceeding in arbitration. In making that determination, the Administrative Arbitrator shall consider whether the delay in the Mediation Process, described below, as a result of substituting cases is outweighed by the additional guidance awards in such substituted cases would likely provide to the Mediation Process.

¹⁴ These arbitrations shall also proceed subject to Paragraph 24. CPR may also seek, and the parties agree to, the assistance of the Administrative Arbitrator in maintaining the timelines of the Test Cases by, for example, helping manage discovery.

¹⁵ The CPR Panel of Distinguished Neutrals comprises those mediators and arbitrators who have been accepted by CPR to its roster. It includes prominent attorneys, academics, retired state and federal judges, as well as highly skilled business executives, legal experts and dispute resolution professionals who are particularly qualified to resolve business and employment disputes.

do so within ten days of being given access to CPR's Panel of Distinguished Neutrals to select a mediator, CPR shall nominate three candidates to be the mediator. The Mediation Parties shall then have seven days from this nomination to agree upon whom they wish to select from the three nominees, or Claimants and Respondent(s), each collectively, shall have 15 days from this nomination to provide CPR with their rankings of the three nominees. The nominee for whom the parties collectively have indicated the greatest preference (i.e., by receiving the lowest combined score) shall be selected as the mediator. If for any reason this procedure should fail to select a mediator, CPR shall within its discretion appoint a suitable mediator from its list of three nominees.¹⁶ Respondent(s) shall pay the mediator's fees. CPR shall promptly determine with the selected Mediator an amount to be deposited to cover the Mediator's fee, which deposit shall be made by the Respondent no later than ten days after invoicing. CPR shall then provide the mediator with the anonymized Final, Written Reasoned Awards.

10. The mediator shall conduct the mediation pursuant to the CPR Mediation Procedure. The object of the mediation shall be to identify a substantive methodology for resolving any and all Initial Mass Arbitrations and Newly Commenced Mass Arbitrations commenced that have not yet been resolved as Test Cases or otherwise (collectively, the "Outstanding Cases," and separately each "Outstanding Case"). The substantive methodology shall be determined by the mediator and the parties, and will likely identify a set of objective criteria that can be used to make an offer to resolve each and every Outstanding Case.
11. Once the Final, Written Reasoned Awards are provided to the mediator by CPR, the mediator and the Mediation Parties identified in paragraph 9 (and their counsel) shall have 90 days (the "Mediation Period") to agree upon a substantive methodology to make an offer to resolve each and every Outstanding Case.
12. From the filing of the Notice(s) of Arbitration of the Initial Mass Arbitrations until the expiration of the Mediation Period, all remaining arbitrations (other than the Test Cases), including any Newly Commenced Mass Arbitrations, shall be stayed, and Respondent(s) agrees to toll the statute of limitations as it applies to any Claimant from the filing of the Notice(s) of Arbitration of these stayed arbitrations until such time as the arbitration is terminated or Claimant provides notice of opting-out, whichever is earlier, in accord with this Protocol.
13. If, by the expiration of the Mediation Period, the Mediation Parties are unable to agree upon a substantive methodology to make an offer to resolve each and every Outstanding Case, then at this point Respondent(s) and Claimant for each

¹⁶ The parties agree that CPR may enlist the assistance of the Administrative Arbitrator to assist in the selection of a mediator by, for example, asking the Administrative Arbitrator to facilitate parties represented by different counsel working with one another to identify a mediator or agree upon the rankings for mediators.

Outstanding Case may choose to opt out of the arbitration process and proceed in court with the Outstanding Case.¹⁷

14. Notice of opting out shall be provided within 60 days of the close of the Mediation Period by Respondent(s) and each of the Claimants choosing to opt out on a Claimant Opt-Out form requiring each Claimant's signature. The opt-outs shall be submitted to cprneutrals@cpradr.org. Absent an opt-out, the arbitrations shall proceed in the order determined by the sequential numbers assigned to the Initial Mass Arbitrations and Newly Commenced Mass Arbitrations as set forth in Paragraph 2, with as many proceeding simultaneously as practicable consistent with the procedures set forth in this Protocol.¹⁸
15. If, by the expiration of the Mediation Period, the parties agree upon a substantive methodology to make an offer to resolve each and every Outstanding Case, offers shall be made to each Claimant with an Outstanding Case in an efficient and fair fashion.
16. Claimants for each Outstanding Case can choose to accept or reject the offer made to them.
17. If Claimant accepts the offer, the parties shall enter into a settlement agreement that shall fully and finally resolve the case.
18. If a Claimant chooses not to accept the offer, then Claimant shall notify CPR within ten days at cprneutrals@cpradr.org that the arbitration is to proceed.
19. The arbitrations shall proceed in a sequence determined by CPR. The sequence shall in part be determined by the timing of the above-described notifications and any other factors necessary for the efficient and orderly arbitration of the remaining cases, with as many arbitrations proceeding simultaneously as practicable, consistent with the procedures set forth in this Protocol.

¹⁷ Following an unsuccessful Mediation Period, the option to opt-out shall be available to each Claimant who brought a Newly Commenced Mass Arbitration, but who was not previously provided the opt-out option. Such Claimant shall have 60 days from the Commencement Date of their arbitration or 60 days from the close of the Mediation Period, whichever is later, to opt-out. This option shall no longer be extended to Claimants with Outstanding Cases once the Mediation Process is reinitiated (see Paragraph 26) and the newly initiated Mediation Process results in an agreed-upon substantive methodology to make an offer to resolve each and every Outstanding Case. At that point, all Claimants of Outstanding Cases should be extended an offer to resolve their cases or proceed with their individual arbitrations.

¹⁸ Nothing herein is meant to preclude parties during the Mediation Process (or at any point in time, including prior to initiation of the Mediation Process) from reaching an agreement (through a separate mediation or otherwise) to settle their individual cases or groups of cases, even if the parties in the Mediation Process are unable to agree upon a substantive methodology to make an offer to resolve each and every Outstanding Case.

Selection of the Arbitrator

20. Within ten days of the completion of the Mediation Period, and upon CPR receiving a Presentation Fee from Respondent(s), CPR shall present a Master List of qualified candidates to the Respondent(s).¹⁹
21. Within seven days of the presentation of the Master List, Respondent(s) may object to any candidate on that list only on the ground that there exists justifiable doubt as to the arbitrator's independence or impartiality in serving in these matters. Such grounds include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. The objection shall state with specificity the reasons for the objection. The objections shall be shared with claimants in the Outstanding Cases proceeding to arbitration, who shall have seven days from when the objections are shared to provide any responses.
22. CPR shall decide objections by referring them to a pro bono [Challenge Review Committee](#).
23. The arbitration selection process for each of the cases that had not yet been resolved shall proceed as set forth above at Paragraph 5, and prior to each appointment of an arbitrator for each arbitration, Respondent(s) shall pay to CPR the Appointment Fee.

The Arbitration Process

24. The arbitration shall then proceed with CPR pursuant to CPR's Employment Rules, provided that:
 - a. Except as provided in subparagraph b, unless the parties and the arbitrator agree otherwise, all arbitration hearings must take place no more than 50 miles from the Claimant's residence.
 - b. The arbitrator shall have the authority to order that testimony be taken or the hearing be conducted, in part or in whole, remotely. Such proceedings may be conducted by telephone, videoconference or by any other suitable platform. In making such determination, the arbitrator should ensure that the proceedings remain fair to all parties and that a remote proceeding would not materially impair the ability of a party to fully present its case and/or defense;

¹⁹ To the extent the Master List has been refreshed with new candidates, it shall be re-presented to Respondent(s) every six months. Respondent(s) shall pay the Presentation Fee in advance of each presentation.

- c. The arbitrator shall render a Final, Written Reasoned Award within 120 days of the initial pre-hearing conference, and any extensions of time that would result in a Final, Written Reasoned Award being rendered more than 120 days after the initial pre-hearing conference will need to be approved by CPR;
 - d. The arbitrator shall handle all scheduling and other administrative matters with the parties;
 - e. The arbitrator shall handle all requests for deposits for the arbitrator's fees and expenses and invoicing directly with the parties; and
 - f. To the extent CPR is requested to provide other administrative assistance, it shall do so if practicable at [the posted fee](#).
25. Every two months, CPR shall indicate to counsel for the parties the availability of arbitrators for appointments over the next 60-day period, with the object being to resolve as many arbitrations as quickly as possible.²⁰
26. By agreement of counsel for Respondent(s) and counsel for 30 or more Claimants, which agreement may be prompted by CPR, the Mediation Process as set forth above may be re-initiated pursuant to the CPR Mediation Procedure; however, the parties may agree to split the mediator's fee, and there shall be no stay of Outstanding Cases.
27. If the parties to the re-initiated Mediation Process are successful in the 90-day timeframe at agreeing upon a substantive methodology to make an offer to resolve each and every Outstanding Case, those Claimants who have not received final decisions in their arbitrations shall be given the opportunity to resolve their cases pursuant to such offers. To the extent the parties to the re-initiated Mediation Process are unable to agree upon a substantive methodology to make an offer to resolve each and every Outstanding Case, then only those Claimants who were not previously provided an opt-out option in connection with their cases shall be afforded that option pursuant to Paragraphs 13-14 above. Otherwise, all Claimants' arbitrations shall continue to proceed under this Protocol.
28. This Protocol shall be subject to requirements of applicable law.
29. CPR reserves the right in its sole discretion to change the elements of this Protocol and any CPR Fees at any time. Those modifications and CPR Fees shall govern any arbitration in which selection of an arbitrator has not already been made or where the applicable CPR Fees have not already been triggered.

²⁰ The parties shall in good faith explore ways to expedite proceedings and resolution of the Outstanding Cases by, for example, working with the Administrative Arbitrator if requested by CPR.